Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170
	)	

OPPOSITION OF CTIA

CTIA[1] hereby responds to the Petition for Declaratory Ruling filed by Arthur V. Belendiuk ("Petition") asking the Commission to find that the 180-day billing dispute provision in Verizon's wireless customer agreement (the "Agreement") violates Sections 415(c) and 201(b) of the Communications Act (the "Act").[2] The Commission should deny the Petition. Section 415(c) of the Communications Act, which applies only to federally tariffed services, does not govern the billing dispute provision in the Agreement. Furthermore, the provision at issue is reasonable under Section 201(b) of the Act, as an informal survey of billing dispute provisions across multiple contexts and industries demonstrates.

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[1] CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable America to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's largest tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] Petition for Declaratory Ruling of Arthur V. Belendiuk, Smithwick & Belendiuk, P.C. (filed Sept. 26, 2016).

I. SECTION 415(c) OF THE ACT DOES NOT APPLY TO BILLING DISPUTES INVOLVING WIRELESS SERVICES.

The Petition is wrong on the law. It is predicated on the assertion that the 180-day billing dispute provision in Verizon's customer agreement unlawfully conflicts with the two-year statute of limitations in Section 415(c) of the Act.[3] Section 415(c), however, does not apply to wireless services at all. The law and Commission precedent are clear: Section 415(c) applies only to *federally tariffed* services, and by Commission rule, wireless providers are not permitted to file tariffs with the FCC. Section 415(c) establishes a statute of limitations for actions at law or Commission complaints in situations involving "overcharges," which are defined in Section 415(g) as "charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission."[4]

Given this statutory limitation, the Commission has *never* applied Section 415(c) to non-tariffed services. To the contrary, Commission precedent confirms that claims involving "overcharges" under Section 415 apply only in situations involving tariffed services on file with the Commission.[5]

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[3] *See* Petition at 2-3.

[4] 47 U.S.C. §§ 415(c) & (g). *See also MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218, 230 (1994) (observing that Section 415(g) of the Act defines "overcharges" by reference to the filed rate); *American Cellular Corporation and Dobson Cellular Systems, Inc., Complainants, v. BellSouth Telecommunications, Inc., Defendant*, Memorandum Opinion and Order, 22 FCC Rcd 1083, n.50 (EB 2007) (noting the "limited definition of 'overcharges' set forth in Section 415(g)").

[5] *See, e.g., Qwest Communications Company v. Budget Prepay, Inc.*, 28 FCC Rcd 5170, 5173 ¶ 8 (EB 2013) (concluding that Qwest's claim for damages could not be based on "overcharges" under Section 415(g) because there was no federal access tariff on file during the period of time in question).

The plain language of Section 415 is fatal to Petitioner's argument because wireless providers do not file "schedules of charges" with the Commission.[6] Pursuant to Section 332(c) of the Act, the Commission exempted Commercial Mobile Radio Service ("CMRS") providers from the tariffing requirements of Section 203 more than two decades ago.[7] In fact, wireless providers are *prohibited* by the Commission from filing tariffs.[8]

Longstanding judicial precedent provides that the parties to a contract may "limit the time for bringing an action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period."[9] Verizon's Agreement easily satisfies this standard because it provides consumers with clear notice of their rights to dispute erroneous charges, and, as demonstrated below, affords them ample time to do so.

II. THE BILLING DISPUTE PROVISION IN VERIZON'S AGREEMENT IS REASONABLE UNDER SECTION 201(b).

The Petition's argument that Verizon's billing dispute provision is unreasonable under Section 201(b) of the Act is also off the mark.[10]

As the communications marketplace has evolved since Congress amended Section 415 more than 40 years ago, so too have important consumer protections. For example, when

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[6] These charges include municipal taxes and 911 fees, such as those identified in the Petition.

[7] *Implementation of Sections 3(n) and 332 of the Communications Act,* Second Report and Order, 9 FCC Rcd 1411, 1418 ¶ 14, 1478 ¶ 174 (1994).

[8] *See* 47 C.F.R. § 20.15(c); *Wireless Consumers Alliance, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 17021, 17031 ¶18 (2000).

[9] *Order of United Commercial Travelers v. Wolfe,* 331 U.S. 586, 608 (1947). *See also Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 611 (2013); *Riddlesbarger v. Hartford Ins. Co.*, 74 U.S. 386, 390 (1869) (finding "nothing in th[e] language or object [of statutes of limitations] which inhibits parties from stipulating for a shorter period within which to assert their respective claims.").

[10] *See* Petition at 3-7.

Section 415 was amended, the Commission's truth-in-billing rules and CTIA's Consumer Code for Wireless Service (the "Wireless Consumer Code") were not in place, and these protections enable consumers to quickly detect and dispute charges on their bills. Through its truth-in-billing rules, the Commission has taken steps to improve consumers' understanding of their telephone bills and ensure they have full information about the nature of their charges in a format they understand.[11] In addition, CTIA's Wireless Consumer Code, to which Verizon adheres, contains numerous provisions to ensure that consumers have redress in the event of a billing dispute.[12] For example, wireless providers make available online and as part of billing statements a toll-free number to access a provider's customer service. Wireless providers must also provide information about how customers can contact the provider in writing, via the Internet, and other methods in addition to toll-free calling. This information must be included, at a minimum, on all billing statements, in written responses to customer inquiries, and on providers' web sites. Consumers today benefit from consumer protections like these, making the 180-day billing dispute provision all the more reasonable.

The Petition's assertion that Verizon's Agreement is unreasonable because it is "forced" upon customers is flawed in a number of respects.[13] Wireless providers, including Verizon, the other national carriers, and the smaller carriers that are signatories of the Wireless Consumer Code, are committed to help consumers make informed decisions when selecting and utilizing their wireless service. Furthermore, in today's market for wireless services, where competition is more vibrant than ever, carriers' billing practices must be responsive to consumers' needs.

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[11] *See* 47 C.F.R. § 64.201.

[12] *See* CTIA, *Consumer Code for Wireless Service*, *available at* http://www.ctia.org/initiatives/voluntary-guidelines/consumer-code-for-wireless-service.

[13] Petition at 5.

Wireless providers are keenly aware that customers who receive unexpected charges on their bills are not happy customers, and they work hard to maintain customer satisfaction to remain competitive. This is evidenced by data from the Better Business Bureau that wireless providers resolved nearly all complaints (98 percent) by consumers in 2015.[14] Finally, with industry's near-elimination of two-year service contracts and adoption of device unlocking policies, consumers who are unhappy with the terms of their wireless service can easily switch service providers. Simply put, providers that fail to provide redress in the event of billing disputes will be left behind in the marketplace.

Moreover, an informal review of provisions that govern customer relations in other contexts and industries demonstrates that the 180-day provision at issue here is reasonable and in fact extends beyond the claim periods in many other consumer contexts. Notably, with regard to banking and credit card scenarios, providers typically offer consumers 60 days to dispute transactions on their bills and statements.[15] Other examples include billing disputes related to municipal broadband services (e.g., 60 days under EPB Chattanooga's FiberOptics Residential Terms and Conditions of Service),[16] billing disputes related to other technology services (e.g., 60

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[14] *See* Better Business Bureau, *2015 Complaint and Inquiry Statistics*, *available at* https://www.bbb.org/2015-complaint-and-inquiry-statistics/.

[15] *See, e.g.,* Capital One, *Billing Rights Summary*, *available at* https://www.capitalone.com/legal/billing-rights/ ("You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors in writing. You may call us or notify us electronically, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question."); *Chase Sapphire Cardmember Agreement*, at 11 *available at* https://www.chase.com/content/feed/public/creditcards/cma/Chase/COL00083.pdf (requiring a customer to contact Chase in writing or electronically within 60 days after the error appears on the customer's statement).

[16] *See EPB Fiber Optics Residential Terms and Conditions of Service* ("If you dispute any charges, you must notify EPB within sixty (60) days of the date of your invoice or any such dispute will be waived.").

days for Google AdWords, Apple Search Ads),[17] challenges to local property tax assessments (e.g., 60 days in Los Angeles County),[18] and challenges to state tax assessments (e.g., 60 days in Massachusetts).[19]

These and other examples demonstrate that a customer notice period of 60 days is an appropriate and reasonable measure in contexts where consumers can incur additional costs as a result of "overcharges." Indeed, the provision in Verizon's Agreement greatly exceeds this benchmark by providing customers with an additional four months to correct a billing error.

[17] *See* Google, *AdWords Terms and Conditions*, *available at* https://support.google.com/adwordspolicy/answer/54818?hl=en (requiring customers to make a claim within 60 days of an invoice date for unresolved disputes); Apple, *Search Ads Terms of Service*, *available at* http://searchads.apple.com/terms-of-service/ ("To the fullest extent permitted by law, You waive all claims relating to the Services and fees unless claimed or asserted within sixty (60) days after the completion of the Campaign associated with such Services or fees.").

[18] *See* Los Angeles County Office of the Assessor, *Assessment Appeals*, *available at* http://assessor.lacounty.gov/contesting-values/.

[19] *See* Massachusetts Department of Revenue, *Appealing a State Tax Bill*, *available at* http://www.mass.gov/dor/individuals/taxpayer-help-and-resources/tax-guides/guide-to-dor/appealing-a-state-tax-bill.html.

III. CONCLUSION.

For the reasons discussed above, the Commission should reject the Petition.

Respectfully submitted,

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